

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Methyl Tertiary Butyl Ether ("MTBE")  
Products Liability Litigation

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Master File No. 1:00 – 1898  
MDL 1358 (SAS): M21-88

**This document refers to the following cases:**

*Basso, et al. v. Sunoco, et al.*, No. 03-CIV-9050  
*Tonneson, et al. v. Sunoco, et al.*, No. 03-CIV-8248

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**DECLARATION OF JENNIFER KALNINS TEMPLE IN SUPPORT OF  
EXXON MOBIL CORPORATION'S REPLY MEMORANDUM OF LAW IN SUPPORT  
OF ITS MOTION *IN LIMINE* TO EXCLUDE TESTING ANALYSIS OF PLAINTIFFS'  
WELL WATER BY FRIEDMAN & BRUYA INC.**

JENNIFER KALNINS TEMPLE, an attorney duly licensed to practice law in the State of New York and in the United States District Court for the Southern District of New York, hereby declares the following under penalties of perjury:

1. I am a member of the law firm McDermott Will & Emery LLP, counsel for defendant Exxon Mobil Corporation (hereinafter "ExxonMobil") in the above-captioned matter. I respectfully submit this Declaration in support of ExxonMobil's Reply Memorandum of Law in Support of its Motion *In Limine* to Exclude Testing Analysis Of Plaintiffs' Well Water By Friedman & Bruya Inc. (hereinafter "Reply") that is being filed concurrently herewith in the above-referenced cases. This Declaration authenticates the exhibits attached hereto and referenced in ExxonMobil's Reply. In accordance with this Court's Individual Rules and Procedures, only the relevant parts of these exhibits are attached.

2. Attached at Exhibit A are true and correct copies of the following pages from the Rough Transcript of the November 25, 2008, Deposition of John P. Maney, Ph.D: 25:14-26:2,

30:2-25, 35:9-36:5, 39:10-40:17; 44:19-45:3, 91:9-92:3, 100:5-20. The attached copies were made at the direction of the undersigned on or around December 8, 2008.

3. Attached at Exhibit B is a true and correct copies of the following pages from the transcript of the July 14, 2008, and October 24, 2008 deposition of Dr. James Bruya: 22:16-24; 279:19-23. The attached copy was made at the direction of the undersigned on or around December 8, 2008.

Dated: December 8, 2008



JENNIFER KALNINS TEMPLE

# **EXHIBIT A**

2 IndexExam

3 UNITED STATES DISTRICT COURT

4 SOUTHERN DISTRICT OF NEW YORK

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5 IN RE: METHYL TERTIARY BUTYL :

6 ETHER ("MTBE") PRODUCTS :

7 LIABILITY LITIGATION, :

8 \_\_\_\_\_

9 This document relates to: :

10 Tonneson, et al. v. Sunoco, Inc., :

11 et al. :

12 NO. 03 Civ. 8248 :

Basso, et al. v. Sunoco, Inc., et al. :

13 No. 03 Civ. 9050 :

14 -----X

15 DEPOSITION OF name , taken by

16 Plaintiff, pursuant to Notice, at the offices of

17 name , on Tuesday, November 25, 2008, commencing

18 at time , before Chandra D. Brown, a

19 Registered Professional Reporter and Notary Public

20 within and for the State of New York.

21

22

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<p style="text-align: right;">Page 22</p> <p>1 J. Maney</p> <p>2 I'm the site owner and I want to know, at</p> <p>3 my gasoline station release site, if MTBE and other</p> <p>4 fuel oxygenation petroleum hydrocarbons are present</p> <p>5 at very low levels in the water underneath my site.</p> <p>6 Would you suggest that I use 524.2, or</p> <p>7 some other testing method?</p> <p>8 MR. RICCARDULLI: Objection.</p> <p>9 A It would be a function of the</p> <p>10 concentration of the analytes of interest underneath</p> <p>11 the site, what the regulations are.</p> <p>12 And typically, Ashta is not done by --</p> <p>13 underground storage tank analyses are not done by</p> <p>14 the Safe Drinking Water Act on the site. At least,</p> <p>15 I believe that's my experience.</p> <p>16 Q Were you provided -- let me ask it this</p> <p>17 way: If the groundwater underneath a gasoline</p> <p>18 station was directly connected to the drinking water</p> <p>19 aquifer, would you, in your opinion, use 524.2 for</p> <p>20 low-level analysis of fuel oxygenates and petroleum</p> <p>21 hydrocarbons?</p> <p>22 MR. RICCARDULLI: Objection.</p> <p>23 You can answer.</p> <p>24 A If, in fact, people are going to be</p> <p>25 drinking this water, and you're going to make an</p>	<p style="text-align: right;">Page 24</p> <p>1 J. Maney</p> <p>2 Q Any type of water.</p> <p>3 A Okay.</p> <p>4 How do you define "low"?</p> <p>5 Q Below one part per billion.</p> <p>6 A Below one part per billion? Okay. You're</p> <p>7 pushing the envelope when you're going down there.</p> <p>8 So you would have to design a method to</p> <p>9 meet the regulatory requirements if it was not a</p> <p>10 Safe Drinking Water Act compliance. You would have</p> <p>11 to sit down with the regulators and decide what</p> <p>12 method would meet all the requirements.</p> <p>13 You're talking non-routine analytical</p> <p>14 methods when you're doing significantly below one</p> <p>15 part per billion.</p> <p>16 Q Is there a method detection limit for MTBE</p> <p>17 in 524.2?</p> <p>18 A Yes, there is.</p> <p>19 (Whereupon, the aforementioned Method</p> <p>20 524.2, Revision 4.1, was marked as Plaintiffs'</p> <p>21 Exhibit 4 for identification as of this date by</p> <p>22 the reporter.)</p> <p>23 BY MS. O'REILLY:</p> <p>24 Q If I could have you review that and</p> <p>25 determine if that is the most current version of</p>
<p style="text-align: right;">Page 23</p> <p>1 J. Maney</p> <p>2 evaluation of the criteria versus the Safe Drinking</p> <p>3 Water Act and that's your objective, yes, you should</p> <p>4 use 524.2.</p> <p>5 And you're painting a different scenario,</p> <p>6 too. If -- clean-up reclamation, they have an</p> <p>7 assortment of different methods that are used in</p> <p>8 various states across the country. So -- but in</p> <p>9 response to your hypothetical, the answer is 524.2,</p> <p>10 if you're going to be drinking the water.</p> <p>11 Q Is there any other methods other than</p> <p>12 524.2 that you're aware of that is designed to or</p> <p>13 can analyze VOCs at low levels in water?</p> <p>14 MR. RICCARDULLI: Objection.</p> <p>15 A There is a list of approved methods by the</p> <p>16 Safe Drinking Water Act. They are in the federal</p> <p>17 register. They are listed by the State of New York</p> <p>18 and ...</p> <p>19 Q Any other methods other than those listed</p> <p>20 in the Safe Drinking Water Act that, in your</p> <p>21 opinion, can be used to analyze VOCs at low levels</p> <p>22 in water?</p> <p>23 A You're talking about waste waters?</p> <p>24 You're talking about any type of water,</p> <p>25 sea waters?</p>	<p style="text-align: right;">Page 25</p> <p>1 J. Maney</p> <p>2 524.2.</p> <p>3 A (Witness views document.)</p> <p>4 MS. O'REILLY: I'll identify it for the</p> <p>5 record.</p> <p>6 For the record, I've marked as Exhibit 4,</p> <p>7 a copy of a document entitled "Method 524.2,</p> <p>8 Revision 4.1," edited by J.W. Munch 1995,</p> <p>9 published by National Exposure Research</p> <p>10 Laboratory. It is 48 pages, 524.2-1 through</p> <p>11 524.2-48.</p> <p>12 A It appears to be complete.</p> <p>13 Q Okay.</p> <p>14 Can you in Exhibit 4 identify for me where</p> <p>15 the method detection limit is for MTBE?</p> <p>16 A It's on Page 524.2-42.</p> <p>17 Q You're referring to Table 7?</p> <p>18 A That's correct.</p> <p>19 Q "Methyl tert," and then "Butylether" is</p> <p>20 run together; is that correct?</p> <p>21 Is that what you are referring to, where</p> <p>22 it says "Methyl-tert-Butylether", is all one word?</p> <p>23 A Yeah. That's MTBE.</p> <p>24 Q What is the MDL reported here?</p> <p>25 A It's reported as -- on this table it's</p>

<p style="text-align: right;">Page 26</p> <p>1 J. Maney</p> <p>2 1.2 parts per billion.</p> <p>3 Q Is this the only method detection limit</p> <p>4 applicable for MTBE under 524.2?</p> <p>5 MR. RICCARDULLI: Objection.</p> <p>6 A I don't understand what you mean.</p> <p>7 Q Okay.</p> <p>8 On Table 7, you identified an MDL 1.2 --</p> <p>9 A Yeah. This is actually for -- as cited</p> <p>10 above, it's for Column 4, which is listed under the</p> <p>11 apparatus, a specific column. So -- I think they</p> <p>12 only give one example. The other analytes, they</p> <p>13 give more than one reporting limit or MDL.</p> <p>14 I believe here, my recollection is that</p> <p>15 there is only MDLs for MTBE given on one column.</p> <p>16 Q Okay.</p> <p>17 Can you explain for the record what you</p> <p>18 mean by "one column"?</p> <p>19 A Sure.</p> <p>20 Do you want me to explain</p> <p>21 gastromatography?</p> <p>22 Q No. I want to you explain what you were</p> <p>23 referring to when you say -- when you're pointing to</p> <p>24 wide-bore capillary Column 4.</p> <p>25 A This is using Column 4. And I think if</p>	<p style="text-align: right;">Page 28</p> <p>1 J. Maney</p> <p>2 A MDLs are instrument specific and time</p> <p>3 specific. So there is going to be a -- for every</p> <p>4 instrument that you have, there will be a different</p> <p>5 MDL.</p> <p>6 This is just used as a guideline that they</p> <p>7 publish these MDLs for, and these methods. You have</p> <p>8 to calculate those according to the guidance that</p> <p>9 EPA supplies to come up with a proper MDL.</p> <p>10 When you are comparing methods, SDW --</p> <p>11 excuse me, the Safe Drinking Water Act requires that</p> <p>12 you use MDLs generated over several days, as I</p> <p>13 mentioned in my affidavits, as opposed to over</p> <p>14 several hours because the EPA feels it's unrealistic</p> <p>15 to use those MDLs generated within the same work</p> <p>16 shift.</p> <p>17 Q If we go in Exhibit 4 to Page 524.2-4 --</p> <p>18 can we just say Page 4?</p> <p>19 A Yes.</p> <p>20 Q So we don't have to repeat 524.2 every</p> <p>21 time.</p> <p>22 A That's fine.</p> <p>23 Q Everybody knows what we're talking about?</p> <p>24 Okay. Section 1.2 --</p> <p>25 A Yep.</p>
<p style="text-align: right;">Page 27</p> <p>1 J. Maney</p> <p>2 you go back to the list of -- let me see if I could</p> <p>3 find this for you -- equipment and supplies,</p> <p>4 capillary GC columns, 6.3.2 -- "any gastromatography</p> <p>5 column that meets the specifications of this method</p> <p>6 may be used. Section 10.2.4.1."</p> <p>7 Then, on Page 524.2-10, they list</p> <p>8 Column 1, Column 2, Column 3, Column 4. Column 4 is</p> <p>9 a 75-meter by 0.53 millimeter id DB 624 column.</p> <p>10 Q Those are different methods of gas</p> <p>11 chromatography?</p> <p>12 MR. RICCARDULLI: Objection.</p> <p>13 A You can use wide bore, narrow bore on this</p> <p>14 method. There is four columns that they suggest</p> <p>15 that you can use. And you're going to use</p> <p>16 equivalent ones, I believe, too, from different</p> <p>17 suppliers. It just doesn't have to be from ^is a</p> <p>18 PEL Co. or JMW Scientific. I think others, it's</p> <p>19 accepted if you use an equivalent column that's</p> <p>20 approved.</p> <p>21 Q With respect to Table 7 in the MDL that's</p> <p>22 reported there for wide-bore capillary, Column 4, is</p> <p>23 that the only appropriate MDL, in your opinion, for</p> <p>24 MTBE in water under 524.2?</p> <p>25 MR. RICCARDULLI: Objection.</p>	<p style="text-align: right;">Page 29</p> <p>1 J. Maney</p> <p>2 Q -- says "Method detection limit (MDLs) are</p> <p>3 compound, instrument and especially matrix dependent</p> <p>4 and vary from approximately 0.02 to 1.6 UG/L.</p> <p>5 We refer to UG/L as parts per billion?</p> <p>6 A Micrograms per liter.</p> <p>7 Q Micrograms per liter?</p> <p>8 I'm a lawyer; parts per billion is much</p> <p>9 easier.</p> <p>10 A Oh, you want to use parts per billion?</p> <p>11 That's fine. Yes.</p> <p>12 Q We agree that in lieu of that, we will use</p> <p>13 parts per billion?</p> <p>14 A Sure. Yep.</p> <p>15 Q Do you agree with that statement in</p> <p>16 defining an MDL?</p> <p>17 A That doesn't define an MDL. It's just</p> <p>18 saying that MDLs will vary for each compound that</p> <p>19 you analyze. Some are more sensitive than others.</p> <p>20 In this table they list some with --</p> <p>21 which, by this method, are very sensitive. And you</p> <p>22 can achieve a method detection limit of 0.02 -- but</p> <p>23 that's not MTBE, that's not one of the most</p> <p>24 sensitive compounds -- and as high as 1.6.</p> <p>25 Q Okay.</p>

1 J. Maney

2 And with respect to how the MDL -- how the  
3 description that is contained here in 524.2 1.2, if  
4 you use the same compound, the same instrument, and  
5 the same matrix, but a different EPA method, would  
6 it be possible to also obtain the same ranges of  
7 MDLs with MTBE in water?

8 MR. RICCARDULLI: Objection.

9 A I'm not quite sure what you're getting at.  
10 But if you're trying to make methods  
11 equivalent, there's similarities between methods,  
12 but there are differences, and some of them can be  
13 subtle and some of them can be significant.

14 As I stated in my affidavit, the key  
15 things that jump out and scream about using 8260B as  
16 opposed to 524.2 is, one, your MDLs were calculated  
17 incorrectly for the Safe Drinking Water Act program,  
18 and, as importantly, you didn't run low-level  
19 standards at the reporting limit, which is key for  
20 documenting the accuracy of your analysis at those  
21 low levels.

22 If you followed the 524.2 and SDWA  
23 guidance, you would have done those, and you would  
24 have documented how well you can or cannot  
25 quantitate at low levels.

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1 J. Maney  
2 Exhibit 5?  
3 A Yes. 1.1, the Scope and Application. To  
4 respond to your question, yep.  
5 Q Do you agree with that statement?  
6 A Yeah.  
7 Q Would it be fair to say that 8260B can be  
8 used for testing groundwater?  
9 A Yes.  
10 MR. RICCARDULLI: Objection.  
11 A Around RCRA facilities, it is used for  
12 that.  
13 Q Can you explain, for the record, how the  
14 groundwater under the scope and application of 8260B  
15 is different from the groundwater under the scope  
16 and application for 524.2?  
17 MR. RICCARDULLI: Objection.  
18 A How the -- let me --  
19 Q Let me ask it this way -- withdraw the  
20 question.  
21 A The scope and application for 524.2 is,  
22 "This is a general purpose method for the  
23 identification, simultaneous measurements of  
24 purgible volatile organic compounds--  
25 THE COURT REPORTER: Excuse me. Can you

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1 J. Maney  
2 slow down, please.  
3 THE WITNESS: I'm sorry.  
4 A "This is a general purpose method for the  
5 identification and simultaneous measurement of  
6 purgible volatile organic compounds in surface  
7 water, groundwater and drinking water in any stage  
8 of treatment."  
9 Q Let me ask this: Is the definition of  
10 groundwater under 524.2 different from the  
11 definition of groundwater under 8260?  
12 MR. RICCARDULLI: Objection.  
13 If you can.  
14 A Obviously, groundwater can be monitored  
15 under the RCRA program. They also can be monitored  
16 under the Safe Drinking Water Act, as well.  
17 And if you are making determinations for  
18 analysis or drinking waters, people -- waters that  
19 people are consuming, you typically -- you do  
20 use 524.2. In all my years of running a laboratory,  
21 when we were supplied with drinking waters, we had  
22 to use the drinking water method.  
23 Now, over and beyond the regulatory  
24 requirements, the advantages of using 524.2 for  
25 getting accurate low levels -- and I mean low levels

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1 J. Maney  
2 that normal labs do, not pushing the envelope, which  
3 was attempted here in this particular work -- you  
4 want to have the quality controls that these methods  
5 and guidance require.  
6 MS. O'REILLY: I'm going to move to strike  
7 the last portion as non-responsive.  
8 Q My question simply was whether the  
9 definition of groundwater under 524.2 is different  
10 from the definition of groundwater under 8260, in  
11 the scope and application of these methods.  
12 MR. RICCARDULLI: Same objection.  
13 A Yeah. They say ground and surface waters  
14 here. They say groundwaters. I don't see any  
15 difference between a definition of groundwater in  
16 the two methods.  
17 Q Can 8260B be used to measure and detect  
18 MTBE in groundwater?  
19 A Yes.  
20 Q Does -- is there an MDL for MTBE in  
21 groundwater under 8260B?  
22 A In groundwater, I would have to check. I  
23 don't recall that one exactly, but -- beginning of  
24 the tables.  
25 Do you want me to try to locate it?

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1 J. Maney  
2 Q Sure. Take a minute.  
3 Just to remind you also, we'll try to take  
4 a break every hour, but If you need a break sooner  
5 than that, let me know.  
6 A Okay. I'm doing fine. Thank you.  
7 In groundwater specifically, you're  
8 looking for?  
9 Q Correct.  
10 A I didn't see anything for groundwaters.  
11 Q Okay.  
12 Does 8260B provide a process by which a  
13 laboratory may obtain an MDL for MTBE in  
14 groundwater?  
15 MR. RICCARDULLI: Objection.  
16 A Do they provide a process for calculating  
17 MDLs?  
18 Yes. It's in Chapter 1.  
19 Q Of 8260B?  
20 A No. Of SW-846.  
21 Q Other than SW-846, is there anything  
22 in 8260B which provides guidance on how to calculate  
23 an MDL for MTBE in groundwater?  
24 MR. RICCARDULLI: Objection.  
25 A I don't think you want me to take the time



<p style="text-align: right;">Page 38</p> <p>1 J. Maney</p> <p>2 to -- there may be some reference, maybe a mention</p> <p>3 of MDL. There may be reference to Chapter 8000B,</p> <p>4 and also to Chapter 1. They are referenced in here.</p> <p>5 So indirectly, at least, there is. There</p> <p>6 may be some other sentence or two about MDL. I just</p> <p>7 don't recall at this point. It's 86 pages, so it's</p> <p>8 possible.</p> <p>9 MS. O'REILLY: For the record, I've marked</p> <p>10 as Exhibit 6, a document entitled "U.S.</p> <p>11 Geological Survey Laboratory Method for</p> <p>12 tert-Butyl Ether and Other Fuel Oxygenates,"</p> <p>13 entitled "MTBE Fact Sheet 2/19/95."</p> <p>14 It's a six-page document.</p> <p>15 (Whereupon, the aforementioned MTBE Fact</p> <p>16 Sheet 2/19/95, was marked as Plaintiffs'</p> <p>17 Exhibit 6 for identification as of this date by</p> <p>18 the reporter.)</p> <p>19 BY MS. O'REILLY:</p> <p>20 Q Have you had an opportunity to review the</p> <p>21 document I've marked as Exhibit 6?</p> <p>22 A (Witness views document.)</p> <p>23 Just briefly, yes.</p> <p>24 Q Have you seen this document before today?</p> <p>25 A Yes, I have.</p>	<p style="text-align: right;">Page 40</p> <p>1 J. Maney</p> <p>2 A As I recall -- it maybe will take me a</p> <p>3 while to find it, but I believe they say it's based</p> <p>4 on 524.2. They use the key QC criteria of 524.2.</p> <p>5 They use low-level quality control samples, which</p> <p>6 are key. They also use MDL calculated over, not</p> <p>7 only several days, but over weeks and months.</p> <p>8 And I've been to this lab, and you have a</p> <p>9 group of sophisticated people. I believe -- this is</p> <p>10 the Denver lab. I've been to this lab. And they,</p> <p>11 after all their work -- and they can dedicate their</p> <p>12 time to doing analyses in R&amp;D, which is, this is</p> <p>13 what they are reporting on here.</p> <p>14 And they didn't feel comfortable reporting</p> <p>15 to the limits that Freidman Bruya reported to. They</p> <p>16 reported -- they are reporting on it 10 times higher</p> <p>17 than that reported by Freidman Bruya.</p> <p>18 Q What method detection limit did they</p> <p>19 achieve using -- the USGS achieve using the method</p> <p>20 that's described here?</p> <p>21 MR. RICCARDULLI: Objection.</p> <p>22 A I would have to try to find that. In the</p> <p>23 summary, I guess I'll find it. The method detection</p> <p>24 limit for the MTBE concentration is 0.06 micrograms</p> <p>25 per liter, and the method reporting it was 0.2.</p>
<p style="text-align: right;">Page 39</p> <p>1 J. Maney</p> <p>2 Q When did you see it?</p> <p>3 A I've known about it for quite some time.</p> <p>4 Q Have you had any conversations with the</p> <p>5 authors of this document?</p> <p>6 A No, I haven't.</p> <p>7 Q Have you read any peer review literature</p> <p>8 concerning this document?</p> <p>9 A No, I haven't.</p> <p>10 Q Did the USGS utilize 524.2 to measure</p> <p>11 MTBE?</p> <p>12 A Yes. They say they based -- if this is</p> <p>13 the article I'm familiar with, they say they based</p> <p>14 their method on 524.2.</p> <p>15 Q Did they follow every procedure in 524.2?</p> <p>16 MR. RICCARDULLI: Objection.</p> <p>17 A One couldn't say that unless you saw their</p> <p>18 SOPs and audited what they did and then you could</p> <p>19 maybe come to some conclusion on that but,</p> <p>20 obviously, you can't speak about the specifics of</p> <p>21 what they did or did not do.</p> <p>22 Q Was it your understanding before you saw</p> <p>23 this document today that this was a use of 524.2 to</p> <p>24 measure MTBE?</p> <p>25 MR. RICCARDULLI: Objection.</p>	<p style="text-align: right;">Page 41</p> <p>1 J. Maney</p> <p>2 Q Is the method detection limit in the parts</p> <p>3 per trillion?</p> <p>4 A Yes. And so is the reporting limit.</p> <p>5 Q Did they utilize the same instruments as</p> <p>6 would be used for a 524.2 analysis?</p> <p>7 MR. RICCARDULLI: Objection.</p> <p>8 A If your attempt is to make Friedman &amp;</p> <p>9 Bruya's analysis comparable to USGS, the USGS that</p> <p>10 I'm familiar with, they are not comparable.</p> <p>11 Q My question is simply: Did the USGS</p> <p>12 utilize the same instruments in the method that's</p> <p>13 described here as those used under 524.2?</p> <p>14 A They use GCMS for the analysis performed</p> <p>15 here. They also use it for hazardous waste, GCMS.</p> <p>16 They use it for air samples. They use it for</p> <p>17 wastewater samples.</p> <p>18 So, yes, it's widely used for biological</p> <p>19 tissues as well matrices.</p> <p>20 Q Did they use the same instruments in the</p> <p>21 analysis they performed here for Method 8260?</p> <p>22 A Could you repeat that?</p> <p>23 I don't think I follow that.</p> <p>24 Q Sure.</p> <p>25 Did USGS use the same instruments to</p>

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1 J. Maney  
2 perform their analysis that would be used  
3 under 8260?  
4 MR. RICCARDULLI: Objection.  
5 A We're talking about the same hardware?  
6 It's not the same methods.  
7 Q Correct.  
8 The same instruments?  
9 A Yes. Same hardware. You have a ^Persian  
10 trap unit, auto sampler. You have a gas  
11 chromatograph, you have a mass spectrometer and  
12 associated computers. And they may or may not be  
13 identical, but they are hyphenated GCMS  
14 instrumentation.  
15 (Whereupon, the aforementioned Measurement  
16 of Methyl Tert-butyl Ether in Raw Drinking  
17 Water, was marked as Plaintiffs' Exhibit 7 for  
18 identification as of this date by the  
19 reporter.)  
20 MS. O'REILLY: For the record, I have  
21 marked as Exhibit 6 -- 7, a document entitled  
22 ^"Measurement of Methyl Tert-butyl Ether in Raw  
23 Drinking Water," prepared for American  
24 Waterworks Association 1998, Lawrence  
25 ^Livermore National Laboratory.

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1 J. Maney  
2 Q Have you had an opportunity to review the  
3 document I've marked as Exhibit 7?  
4 A For time wise, it's probably best to ask  
5 your question and I will go to that section because  
6 it would take awhile, obviously, to read an article.  
7 Q Have you seen this study before?  
8 A I don't know. I've seen some stuff by  
9 Lawrence Livermore National Laboratory, but I don't  
10 know if I've seen this one.  
11 Q Okay.  
12 How much time do you think it would take  
13 for you to review this document?  
14 A Probably a half-hour for me to truly  
15 comment on it. I think I can handle what you're  
16 getting at if you go to specific sections. If need  
17 be, I can go back and read others.  
18 Q Okay.  
19 Well, under the method section on  
20 Page 2 --  
21 MR. RICCARDULLI: Just for the record,  
22 this is an on--  
23 MS. O'REILLY: Excuse me. Page 4 of the  
24 document.  
25 A 1, 2, 3, 4. Okay. I'm on Page 4.

Page 44

1 J. Maney  
2 MR. RICCARDULLI: I just want to say it  
3 was not numbered, just so we're clear. When  
4 we're referring to the page numbers, we should  
5 just count from the front of them so the record  
6 is clear.  
7 MS. O'REILLY: Okay.  
8 Q If you could read those two paragraphs,  
9 where it describes the method, for me?  
10 A Okay.  
11 "Method: A 25ML water" --  
12 Q I'm sorry. Read them to yourself. I  
13 apologize.  
14 A I'm sorry.  
15 Q No. I wasn't clear.  
16 A (Witness views document.)  
17 I've scanned it.  
18 Q Okay.  
19 Did Lawrence Livermore National Laboratory  
20 use EPA Method 524.2 to measure MTBE in water in  
21 this study?  
22 A They used a ^duty rated MTBE method, an  
23 isotopic method. So it's -- I don't believe there  
24 is an isotopic method out there for MTBE in drinking  
25 water, so they are doing R&D.

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1 J. Maney  
2 Q What do you mean by R&D?  
3 A Research and development.  
4 Q That's just for -- I clarified that  
5 sometimes for people reading the transcript. You  
6 and I may know what we're talking about.  
7 A Thank you. Appreciate that.  
8 Q We also have to remember that a judge or  
9 other people may be seeing this.  
10 A Yes.  
11 Q So would your answer be the same for  
12 whether or not they used 8260 to measure MTBE?  
13 MR. RICCARDULLI: Objection.  
14 A Could you try that again?  
15 I don't understand.  
16 Q Sure.  
17 Did Lawrence Livermore National Laboratory  
18 utilize EPA Method 8260B to measure MTBE in water?  
19 MR. RICCARDULLI: Objection.  
20 A I don't see them referring to that here.  
21 Maybe there is on another page. But they are  
22 referring to a 25ML sample volume. They are talking  
23 about using ^duty rated MTBE, purging the helium.  
24 They talk about the manufacturer of the  
25 purge-and-trap device. The -- it's PCMS, they are

<p style="text-align: right;">Page 90</p> <p>1 J. Maney</p> <p>2 asked, regards to software.</p> <p>3 I believe 524.2 says you should not</p> <p>4 inappropriately round up. Now, that applies to</p> <p>5 whether you assign a computer program to do your</p> <p>6 work or not.</p> <p>7 Q Have you personally used the software</p> <p>8 utilized by Friedman &amp; Bruya?</p> <p>9 A Yes.</p> <p>10 Q To perform similar calculations?</p> <p>11 A What software are you talking about?</p> <p>12 EnviroQuant or Excel or --</p> <p>13 Q The software utilized by the analytical</p> <p>14 instrument Friedman &amp; Bruya used?</p> <p>15 A Okay. That's EnviroQuant, and I have used</p> <p>16 it.</p> <p>17 Q Have you used it to perform MDL</p> <p>18 calculations similar to the ones in February 12,</p> <p>19 2008?</p> <p>20 MR. RICCARDULLI: Objection.</p> <p>21 A I can't say I've done that specifically.</p> <p>22 Q Is this -- I'm sorry.</p> <p>23 A I don't recall.</p> <p>24 Q Is the -- I'm sorry, I missed the name;</p> <p>25 EnviroQuant?</p>	<p style="text-align: right;">Page 92</p> <p>1 J. Maney</p> <p>2 software and changed the reporting so you weren't</p> <p>3 rounding at these levels.</p> <p>4 Q Have you, in the past, criticized</p> <p>5 laboratories for performing hand calculations in</p> <p>6 calculating reporting limits?</p> <p>7 A Hand calculations?</p> <p>8 Q Using hand calculations to calculate</p> <p>9 reporting limits?</p> <p>10 MR. RICCARDULLI: Objection.</p> <p>11 A I don't -- what do you mean by "hand</p> <p>12 calculation"?</p> <p>13 Using a calculator or doing it longhand</p> <p>14 or --</p> <p>15 Q Yes.</p> <p>16 A If that's -- the method wouldn't be a</p> <p>17 problem. It's how it's done.</p> <p>18 Q Is it industry standard to hand calculate</p> <p>19 reporting limits?</p> <p>20 MR. RICCARDULLI: Objection.</p> <p>21 A Unclear.</p> <p>22 Could you please repeat that?</p> <p>23 Q Yeah.</p> <p>24 Your prior testimony was that the rounding</p> <p>25 should not be performed before the calculation, and</p>
<p style="text-align: right;">Page 91</p> <p>1 J. Maney</p> <p>2 A EnviroQuant.</p> <p>3 Q Is that software utilized by other</p> <p>4 analytical laboratories?</p> <p>5 A It's widely used.</p> <p>6 Q Does the EPA use this software?</p> <p>7 A I would imagine so, because they have a</p> <p>8 lot of Hewlett Packard equipment.</p> <p>9 Q Do you have any EPA guidance -- and I</p> <p>10 understand you mentioned 524 -- other than 524 that</p> <p>11 indicates that the software should not be used to</p> <p>12 round up numbers in performing an MDL study?</p> <p>13 A You can go to just about every basic</p> <p>14 chemistry science book there is, and it will always</p> <p>15 tell you not to round up prior to calculation.</p> <p>16 See, the difference here is you're</p> <p>17 pushing -- you asked your laboratory to push the</p> <p>18 limit to .02. And, as a result of this, they are</p> <p>19 pushing new grounds.</p> <p>20 Now, rounding to .02 was fine when you're</p> <p>21 giving reporting limits around 1 PPB. This is when</p> <p>22 you need a laboratory that's experienced with</p> <p>23 low-level detections because they would have caught</p> <p>24 this right away, and they wouldn't have allowed that</p> <p>25 to happen. They would have changed it, go into the</p>	<p style="text-align: right;">Page 93</p> <p>1 J. Maney</p> <p>2 that the, as I understood it, the software --</p> <p>3 Friedman &amp; Bruya should have gone in to modify the</p> <p>4 software so that it did not perform the rounding; is</p> <p>5 that correct?</p> <p>6 A Well, you'll modify the defaults.</p> <p>7 Q If you modify the defaults, how is the</p> <p>8 rounding performed; by hand or by machine?</p> <p>9 A Could be by machine. Part of this is hand</p> <p>10 done. They take the numbers off of this and they</p> <p>11 put it into something, unless they've written some</p> <p>12 code that calculates the MDL.</p> <p>13 It's the rounding issue which is a</p> <p>14 problem, not whether it's done by a computer or by</p> <p>15 hand or by a calculator. You don't round</p> <p>16 significant figures when you're interested in -- the</p> <p>17 first seven ^ standards gave you an MDL of zero ^if</p> <p>18 you don't round out.</p> <p>19 You don't have an MDL of zero. It's</p> <p>20 nonsense. So, something's screaming out at you</p> <p>21 right there.</p> <p>22 Q Can you identify for me in 524.2, I think</p> <p>23 you indicated, where it would prohibit the use of</p> <p>24 this software for performing the rounding for</p> <p>25 purposes of calculating an MDL?</p>

1 J. Maney

2 which would translate into an RL of 0.04."

3 Do you see that?

4 A Yes.

5 Q Is it your opinion that MTBE would not be  
6 present at an MDL of 0.02 in the samples that you  
7 looked at?

8 MR. RICCARDULLI: Objection.

9 MS. O'REILLY: Can the Court Reporter read  
10 it back.

11 (Whereupon the requested question was read  
12 back by the Court Reporter.)

13 MR. RICCARDULLI: Same objection.

14 A My opinion is that you shouldn't rely upon  
15 this data for the number of issues I that pointed  
16 out. One, starting from not being a certified lab  
17 and, therefore, not be being subjected to auditing.  
18 The SOP that was -- didn't even address SIM,  
19 selective ion monitoring, which is the method that  
20 was employed for these samples.

21 There is a number of errors in that SOP,  
22 which, if they are following it, they start from  
23 Table 1, right on, going forward, the 25 percent  
24 error right there. You take that, and then you go  
25 through all the points that I make in my deposition

## **EXHIBIT B**

1       our program.

2       Q     And any other private laboratories you're aware of  
3             that conduct the analysis down to the part per  
4             trillion level?

5       A     I've never tracked it. There could be, but I don't  
6             remember right now.

7       Q     And prior to your engagement on this matter -- by the  
8             way, I take it you were retained by the law firm of  
9             Miller, Axline & Sawyer. Is that correct?

10      A     At various times.

11      Q     But with respect to the sampling for Fort Montgomery,  
12             New York --

13      A     Yes.

14      Q     -- that's who retained you?

15      A     Yes, sir.

16      Q     And prior to your retention by Miller, Axline &  
17             Sawyer, had you or your laboratory performed analysis  
18             of MTBE in drinking water down to part per trillion  
19             levels?

20      A     We performed analysis of MTBE in parts per trillion  
21             levels. I don't know if it was in wastewater or  
22             whether it was in water from a drinking aquifer.

23      Q     And when had you done that? Do you recall?

24      A     I think five or ten years ago.

25      Q     And apart from that, any other analysis that you're

1 for the testing of drinking water, correct?

2 A No. They actually --

3 Q And --

4 A -- stated something different. They say that their  
5 method was comparable to the U.S. Environmental  
6 Protection Agency Method 524.2.

7 Q Which is a method designed to test drinking water,  
8 correct?

9 A Yes.

10 Q The protocol that you've used to test for MTBE in the  
11 levels of parts per trillion, when you referenced  
12 using it once or twice before, have you ever used it  
13 outside of litigation?

14 A Yes.

15 Q In what context?

16 A We've used it to determine the levels -- low levels  
17 of compounds such as vinyl chloride at low levels,  
18 dichloral -- dibromoethane at low levels, and MTBE.

19 Q And have you ever submitted your methods to a  
20 scientific journal for review by your peers in the  
21 scientific community?

22 A Methods -- we've followed the methods that are  
23 presented in the scientific community.

24 Q But you said you used a special sparge technique in  
25 this particular case, correct?